presumption against these accused is sufficiently raised by the escaping and the obstruction.

For these reasons I remitted the case to the Magistrate in order that the trial should be continued and the accused called upon for their defence.

Order accordingly.

THAM KWA CHIN v. CHOONG HOONG SUM.

[O. C. J. (Spenser Wilkinson J.) May 31, 1954]

[Penang — Civil Suit No. 20 of 1953]

Damages — Negligence — Loss of expectation of life — Measure of Damages — Regard to be had to awards in comparable cases — Statement of Claim, claiming general damages.

In **Benham v. Gambling**[3] the Lord Chancellor laid down the following principles to be applied in cases of this kind:

> "Damages given for the shortening of life should not be calculated solely, or even mainly, on the basis of the length of life that is lost; they should be fixed at a reasonable figure for the loss of a measure of prospective happiness. If, however, the character or habits of the deceased were calculated to lead him to a future of unhappiness or despondency that would be a circumstance justifying a smaller award. No regard must be had to financial losses or gains during the period of which the victim has been deprived, damages being awarded in respect of loss of life, not of loss of future pecuniary prospects. In the case of a child, as in the case of an adult, the proper sum to be awarded should not be greater because the social position or prospect of worldly possession is greater in one case than another."

In assessing the damages and following the principle on question of quantum of damages laid down in **Benham v. Gambling** *supra* it should be borne in mind that the value of the money has fallen very much since that case was decided.

It is neither necessary nor in accordance with the best traditions of pleading to claim any specified sum in a statement of claim when claiming general damages. For general damages the proper prayer is "The Plaintiff claims damages."

Cases referred to:—

(1) *Rushton v. National Coal Board* (1953) 1 Q.B. 495; (1953) 1 All E.R. 314.

(2) *Bird v. Cocking & Sons Ltd* (1951) 2 T.L.R. 1260.

(3) *Benham v. Gambling* (1941) A.C. 157; (1941) 1 All E.R. 7.

(4) *Mohamed Abdul Cader v. Frederick Smith* (1947) M.L.J. 36.

(5) *Edler v. Greenwich & Deptford Hospital Management Committee* (1953) C.L.Y. para 953.

ACTION FOR DAMAGES.

Ng Jit Geow for the plaintiff.

Lim Cheng Ean for the defendant.

Spenser Wilkinson, J.: — Having given judgment in this case in favour of the plaintiff for damages in respect of the negligence of the defendant's driver in knocking down and causing the death of the deceased I reserved judgment on the question of the quantum of damages.

Dealing first with the special damages the amount claimed for funeral expenses is $150 and this figure is not disputed. The amount of $700 claimed for costs for obtaining letters of administration includes a sum of $450 deposited in respect of estate duty. I do not think that this sum can be included in the claim, and the total of the special damages will therefore amount to $400.

There remains the claim in respect of loss of expectation of life. This is a matter which is very difficult to assess. The deceased was a boy of seven in reasonably good circumstances in life and there is no reason to suppose that he would not have led a happy life. In the case of *Rushton v. National Coal Board*[1] it was held, approving the observations of Birkett L.J. in *Bird v. Cocking & Sons Ltd.*[2], that in assessing damages for personal injuries, the Courts, although they cannot apply any uniform standard, will have regard to and be guided by the general principles which have been applied in decisions in comparable cases. I think to some extent this principle applies to damages for loss of expectation of life.

In the case of *Benham v. Gambling*[3] in which the Lord Chancellor laid down the principles to be applied in cases of this kind a sum of £200 was awarded in respect of an infant of 2½ years of age. In *Mohamed Abdul Cader v. Frederick Smith*[4] Worley J. in a very careful judgment, following the principles laid down in *Benham v. Gambling*[3] awarded a sum of $1,500 in respect of a Tamil Mohamedan, aged about 28. That case was decided in 1941 and in view of the change in the value of money since then, I think the award in a similar case would now be considerably higher. In *Edler v. Greenwich & Deptford Hospital Management Committee*[5] Finnemore J. awarded a sum of £350 for loss of expectation of life in respect of a girl of 11, who died owing to the negligence of a doctor.

Following as best I can the indications given by these decisions and taking into account the particular facts of the case before me I have come to the conclusion that the proper sum to award in respect of loss of expectation of life in this case is $3,000.

The sum claimed in the Statement of Claim was $15,000. This in my opinion was fantastic. I would point out that it is neither necessary nor in accordance with the best traditions of pleading to claim any

specified sum in a Statement of Claim when claiming general damages. Particulars with figures for special damages have, of course, to be given, but for general damages the proper prayer is "The plaintiff claims damages".

There will be judgment for the plaintiff for $3,400 with costs.

Order accordingly.

Solicitors for the plaintiff: *Conaghan, Wreford & Thornton.*

Solicitor for the defendant: *Lim Cheng Ean.*

PUBLIC PROSECUTOR v. SAMINATHAN & ORS.

[A. Cr. J. (Storr, J.) June 1, 1954]

[Muar — Criminal Appeal No. 4 of 1954]

Customs Ordinance, 1952, ss. 115 & 131 — Charge of knowingly concerned in conveying uncustomed goods — Presumption that goods are uncustomed.

In this case the respondents were charged on two counts under s. 131 of the Customs Ordinance. At the trial it was submitted on behalf of the respondents that the prosecution had not proved that the goods were uncustomed goods and that the presumption under s. 115 of the Customs Ordinance did not apply in this case. The learned President of the Sessions Court agreed with this submission and acquitted the respondents. The learned Public Prosecutor appealed against the acquittal on the first charge that is of being knowingly concerned in conveying uncustomed goods.

Held: (1) once the prosecution has proved that the respondents had conscious knowledge of the possession of the goods and were charged, then as soon as they claimed trial, the presumption under s. 115 of the Customs Ordinance arose; (2) once it is proved that the duty has not been paid, there is a breach of the provisions of the Customs Ordinance and the goods *prima facie* became uncustomed goods and the respondents charged under s. 131(1)(e) of the Customs Ordinance were by s. 131(2) of the said Ordinance deemed to know that the uncustomed goods were in fact uncustomed and the onus of showing that they were not so would then be on them.

Case referred to:—

(1) *Kee Kim Chooi v. Public Prosecutor* (1952) M.L.J 180.

MAGISTRATE'S CRIMINAL APPEAL.

I. Talog Davies for the appellant.

David Marshall for the respondents.

Storr, J. : — The respondents in this appeal were originally charged with two charges under the Customs Ordinance No. 42 of 1952 as follows :—

"1. That you at about 2.50 p.m. on 23-12-53 at Parit Unas, Muar, in the State of Johore, were knowingly concerned in conveying uncustomed goods, to wit, 622 lbs. tobacco leaves, 32 packages cigars, 41 packages chewing tobacco and 8 dozen and 5 tins hair oil in van No. BB1138 with intent to defraud the Government of the duties thereon, to wit, $5,483.93 and that you have thereby committed an offence contrary to and punishable under s. 131(1)(e) of the Customs Ordinance, 1952.

2. That you at the same time and place were knowingly concerned in an attempt at fraudulent evasion of customs duty, to wit, $6,941.33, being the duty payable upon 6 bundles of tobacco leaves weighing 913½ lbs. and that you have thereby committed an offence contrary to and punishable under s. 131(1)(g) of the Customs Ordinance, 1952."

At the conclusion of the prosecution case, the learned President of the Sessions Court came to the conclusion that the prosecution had not made out a case which, if unrebutted, would warrant a conviction and he acquitted the respondents. From this acquittal on the first charge, the learned Public Prosecutor has appealed.

The facts of the case with regard to the first charge are very simple. The respondents were in a van and were stopped by Inspector Tungku Yusof and on a search being made of the van, the 'goods' mentioned in the first charge were discovered therein. All these goods, if imported into the Federation, would be liable to duty.

The learned Deputy Public Prosecutor (Mr. T. Davies) appeared for the appellant and Mr. D. S. Marshall for the respondents.

For the appellant, it was argued that the prosecution in the Court below had made out a case which, if unrebutted, would warrant a conviction, in that the prosecution had proved the three necessary ingredients of the charge. These were (1) that the respondents knowingly were in possession of the goods, subject to the charge, which were found in the van, (2) that the goods in question were uncustomed as alleged in the charge, i.e. they were imported goods on which duty had not been paid and were therefore subject to a breach of the provisions of the Customs Ordinance, 1952, and (3) that the respondents knew that the goods were uncustomed in the sense charged, i.e. that the goods were imported goods and that duty on them had not been paid.

With regard to the question of possession, there was never any question that the goods were in the possession of the respondents with their knowledge and approval.

The learned Deputy relied on the judgment of Thomson J. in *Kee Kim Chooi & Ors. v. Public Prosecutor*[1], where in referring to a somewhat similar case in relation to the harbouring of uncustomed tobacco, the learned Judge came to the conclusion that the presumption under section 99 of the Customs Enactment, 1936 (now section 115 of the Customs